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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, *Cross-Petitioner*

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, et al., *Cross-Respondents*

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, *Cross-Petitioner*

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, et al., *Cross-Respondents*

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Cross-Petitioner, The Denver and Rio Grande Western Railroad Company, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in this case on November 19, 1964, affirming a district court judgment that Cross-Petitioner violated Article 64 of the collective bargaining agreement between the parties; the writ to issue only in the event this Court should grant the petition for a writ of certiorari in No. 847 at this Term.

OPINION BELOW

The opinion of the court of appeals (Appendix B, *infra*, pp. 14-19) is reported in 338 F.2d 407. The findings of fact,

conclusions of law and order of the district court are not reported. They appear at pages 36-46 of the Record.

JURISDICTION

The judgment of the court of appeals was entered on November 19, 1964. (Appendix A, *infra*, p. 13) Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Where a collective bargaining agreement between the parties contains no provision restricting the right of the employer carrier from arranging its runs without first negotiating with a railroad labor union, may the carrier unilaterally change a run from a straight-away run to a turnaround run without affecting the number of employees or their wages or causing them any hardship?

STATUTE INVOLVED

This appeal involves Section 3 First (p) of the Railway Labor Act (45 U.S.C. Section 153 First (p)). This provision is quoted in full in Appendix C, *infra*, p. 20.

STATEMENT

Cross-Petitioner is the Denver and Rio Grande Western Railroad Company (hereinafter referred to as "Rio Grande"). Cross-Respondents are the Brotherhood of Railroad Trainmen and certain of its members (hereinafter referred to as "Trainmen").

This is a suit brought by Trainmen to enforce an award of the National Railroad Adjustment Board pursuant to the Railway Labor Act, Section 3 First (p) (45 U.S.C. §153

First (p)). The facts in the present case are undisputed and were stipulated by the parties (R. 21-35).[1]

Prior to March 6, 1952, the Rio Grande operated a Tintic Branch run between Provo and Eureka, Utah, to which one train crew was assigned. The distance between the two terminals was about 45 miles. The crew assigned to the run operated out of Provo on Mondays, Wednesdays and Fridays and out of Eureka on Tuesdays, Thursdays and Saturdays. (R. 37, 80.) On March 6, 1952, the Rio Grande notified the Trainmen that the foregoing straight-away assignment would be cancelled and a new daily turnaround run would be operated over the same territory, with the same rates of pay. New diesel engines made the turnaround possible. Both the old and new assignments were for six days a week. The same number of employees was required on the new assignment. (R. 37-38.) Since ore-loading business at Eureka had disappeared, under the new assignment the trains from Provo ordinarily ran a lesser distance than before (R. 56, 57, 90, 104). The Trainmen have stipulated that the claimants suffered no loss of wages or hardship from the new assignment (R. 25, 35; see also R. 56, 100).

The claimants in this case are brakemen who bid for and received jobs on the new turnaround run (R. 2, 6, 99). They were all paid at least a day's pay on the days for which claims were filed (R. 44, 100). Their theory is that they should be allowed an additional day's pay as a penalty, because the Rio Grande, they concluded, had no right to change the Provo-Eureka run to a turnaround without prior approval from the Trainmen (R. 33, 68-69, 100). Claims were filed by cross-respondents Gardner and Black and other brakemen from June 1952 until December 1959

[1] Reference is to the pages of the printed "Transcript of Record" in the court of appeals.

(R. 14-18). However, no brakemen filed any claims from September 1953 through February 1958 (R. 100).

In May 1952, the Order of Railway Conductors complained to the Rio Grande that the cancellation of the Provo-Eureka straight-away run and the inauguration of the new turnaround run violated similar contractual Articles in its agreement with the Rio Grande. Pursuant to this protest a few conductors filed claims, but neither they nor the Order of Railway Conductors ever processed them to the National Railroad Adjustment Board, First Division, and they have been abandoned (R. 58, 67-68).

At the same time that Conductors and Trainmen were notified of the cancellation of the straight-away service and the inauguration of the turnaround service on this Tintic Branch, the Rio Grande's engineers and firemen were also notified (R. 39). However, neither they nor their organizations filed any protests or claims (R. 58).

Before 1945, Article 67 of the collective bargaining agreement between the Rio Grande and the Trainmen (the predecessor to the present Article 64) required the Rio Grande to negotiate with the Trainmen in establishing new runs, reading as follows (R. 24):

> "In establishing new runs the proper general officer will notify the General Chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service."

However, in May 1945, Article 64 of the Agreement was revised to provide as follows (R. 24):

> "The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments. Notices calling for bids on any new run or new assignment must state definite limits and must show number of days per week (6 or 7) to be worked and time crew will go on duty.

"Rates of pay for any new run or new assignment will be in accordance with rates for similar assignments on the same Sub-Division. If no similar assignment on the same Sub-Division, rates of pay will be a matter of negotiation between the designated General Officer and General Chairman of the Brotherhood of Railroad Trainmen.

"NOTE: Time for crews to go on duty will not be changed without at least 48 hours' notice. When time to go on duty is changed one (1) hour or more the assignment will be rebulletined."

Prior and subsequent to the 1945 promulgation of Article 64 of the collective bargaining agreement, the Rio Grande cancelled many of its runs by giving notice to the crews but without negotiation with the Trainmen. Some of the runs cancelled were because of abandonment approved by the appropriate Governmental agency, but many of the cancelled runs did not involve track abandonment. Apart from the present case, the Trainmen did not assert that the Rio Grande violated the 1952 collective bargaining agreement by such cancellations. (R. 60-61, 65.) Railroad-union collective bargaining contracts do not customarily contain clauses expressly reserving to management the right to abolish runs (R. 61).

A referee, who was appointed due to the fact that the ten members of the First Division of the Adjustment Board were evenly divided, concluded that the Rio Grande's action had violated Article 64 of the collective bargaining agreement (R. 91-92).

The Rio Grande considered this award erroneous and therefore refused to comply with the money award therein. The Trainmen brought this suit to enforce the money award (R. 31, 33, 43, 96-98). Although the Provo-Eureka straight-away run has not been restored, the Trainmen are no

longer accruing claims, by virtue of a settlement reached in 1960 (R. 31, 43).

The district court held that the Rio Grande had violated Article 64 of the collective bargaining agreement (R. 44) and the court of appeals affirmed this holding (Appendix B, *infra*, pp. 16-17).

REASONS FOR GRANTING THE WRIT

1. The question presented in petition No. 847 does not warrant review, but certainly if the Court determines to grant the labor union's petition in No. 847, then there should be a review of the entire case so that the error of the court below in holding that Article 64 of the contract had been violated can be corrected. Accordingly, we are filing this conditional cross-petition.

2. The holding of the court of appeals that the Rio Grande violated Article 64 of the collective bargaining contract by actions which were not expressly restricted by Article 64 is in conflict with the decision of this Court in *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U.S. 270, 274-284 and the decision of the Court of Appeals for the Ninth Circuit in *Gunther* v. *San Diego & Arizona Eastern Railway Co.*, 336 F.2d 543, 546-547 (9th Cir. 1964), certiorari granted, 33 U.S. Law Week 3285. These two cases reiterate the settled principle that a party to a collective bargaining agreement only surrenders those rights that are specifically limited by the collective bargaining agreement.[2]

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[2] This concept was also approved in *Rutland Ry. Corp.* v. *Brotherhood of Locomotive Engineers*, 307 F.2d 21, 35 (C.A. 2, 1962), certiorari denied, 372 U.S. 954. See also *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574, 583, and First Division Award Nos. 15119, 15190, 15636, 16032 and 17222.

Thus in the absence of a limitation or a restriction in the collective bargaining agreement, it is well established that a carrier has the right to cancel an old run and to establish new runs without negotiating with the labor organization. For example, in Award 15119 of the First Division, rendered in 1952 by Referee Albert A. Colby, a carrier combined the assignments of two crews and established a single run operating on a turnaround basis. In upholding the railroad's right to make this change, the award stated (p. 5):

> "The carrier is not obliged to point to any rule, as petitioner contends, that permits the challenged assignment. Conversely, the burden is on the petitioner to show that the carrier has surrendered or limited its basic management functions by the use of language in some rule that is susceptible of no other interpretation."[3]

The court below held that the right of the Rio Grande to cancel the old straight-away runs between Provo and Eureka and to establish a new turnaround run between Provo and Eureka was limited by Article 64 of the collective bargaining agreement (Appendix B, *infra*, pp. 16-17). This Article states (R. 24):

> "The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments. Notices calling for bids on any new run or new assignment must state definite limits and must show number of days per week (6 or 7) to be worked and time crew will go on duty.
>
> "Rates of pay for any new run or new assignment will be in accordance with rates for similar assignments on the same Sub-Division. If no similar assignment on the same Sub-Division, rates of pay will be a matter of

[3] Other First Division Awards holding that in the absence of a restrictive rule a carrier has the unilateral right to abolish established assignments and create new ones include, *e.g.*, Award Nos. 7509, 12302, 12907, 16188, 16189, 16501, 18845 and 19466.

> negotiation between the designated General Officer and General Chairman of the Brotherhood of Railroad Trainmen.
>
> "NOTE: Time for crews to go on duty will not be changed without at least 48 hours' notice. When time to go on duty is changed one (1) hour or more the assignment will be rebulletined."

Article 64 expresses no limitation or restriction on the right of the Rio Grande to cancel an old run and to establish a new run. There can be no violation of this Article here, for the Rio Grande complied with all of its provisions.

The first paragraph of Article 64 expressly permits the carrier to establish new runs or new assignments without negotiation. The notice requirement for bids on the new run was satisfied by the Rio Grande (R. 24). The rate of pay requirement, in the second paragraph, was fulfilled in that the Provo-Eureka turnaround run was admittedly similar to the straight-away assignment. The Trainmen do not claim that the carrier violated Article 64 in giving the same rate of pay for the new run. The starting time requirement, found in paragraph three, was also completely satisfied. The Rio Grande gave adequate advance notice (R. 23) and in fact rebulletined (*i.e.*, opened for bids by employees) the new run (R. 24).

Although the history of Article 64 is not mentioned in the district court's findings of fact or conclusions of law, the court of appeals relied mainly on that history in an effort to show that Article 64, notwithstanding its language, required negotiation as well as notice (Appendix B, *infra*, pp. 16-17). To the contrary, though, the history of Article 64 shows that in 1952 the Rio Grande had the right to cancel the old Provo-Eureka straight-away runs and to establish a new turnaround run without first negotiating with the Trainmen.

Prior to 1945 the collective bargaining agreement between the parties provided as follows (R. 91):

> "In establishing new runs the proper general officer will notify the General Chairman of the Brotherhood of Railroad Trainmen and negotiate rates and conditions to cover the service." (Article 67.)

The Rio Grande, however, retained the right to abolish old runs (R. 55, 60-61, 65). Accordingly, before 1945 the Rio Grande had the right to abolish old runs without negotiating with the Trainmen but had a specifically limited right to establish new runs.

In 1945 the Rio Grande, by express language, regained the right that it once had to establish new runs without negotiating with the Trainmen. This was obtained when Article 64 (*supra*, pp. 7-8) was substituted for the old provision in the collective bargaining agreement. This new rule eliminated the former restrictions or limitations on the right of the Rio Grande to change a run without first negotiating with the Trainmen.

Despite this history, which conclusively shows that after 1945 the Rio Grande had the right to change runs without negotiating with the Trainmen, still the court below held that the Rio Grande's right in 1952 to abolish the Provo-Eureka straight-away run and to establish the new Provo-Eureka turnaround run was limited. In reaching this erroneous conclusion the court below relied upon the undependable fact that when the parties were bargaining over the terms of the 1945 collective bargaining agreement, the Rio Grande submitted a proposed draft of Article 64 which referred to "discontinuing or rearranging old assignments" (Appendix B, *infra*, pp. 16-17). The court's reliance upon this language in the proposed Article 64 was wrong for two reasons. First, since there was no evidence of why the pro-

vision for discontinuing and rearranging old runs was not accepted, the court below should not have relied on that fact to interpret Article 64. In a similar circumstance of interpreting a statute, where the petitioners relied upon two rejected bills, this Court stated as follows:

> "These bills were sent to an appropriate committee, but were never reported out. It does not appear whether the bills died because they were thought to be unnecessary or undesirable. No hearings were held; no committee reports were made. Under such circumstances, the failure of Congress to amend the statute is without meaning for purposes of statutory interpretation." *Order of Railway Conductors* v. *Swan,* 329 U.S. 520, 529.

Other cases where the courts refused to place reliance upon the rejection of a bill include *Gemsco, Inc.* v. *Walling,* 324 U.S. 244, 260-261; *United States* v. *United Mine Workers of America,* 330 U.S. 258, 282; *Jefferson* v. *United States,* 178 F.2d 518 (4th Cir. 1949), affirmed, 340 U.S. 135; *Jones* v. *Liberty Glass Co.,* 159 F.2d 316, 317 (10th Cir. 1947); *Holt* v. *Middlebrook,* 214 F.2d 187, 191 (4th Cir. 1954).

Accordingly, since Article 64 was unambiguous and since there was no evidence as to why the carrier's proposal was not accepted in full, then the court below should not have relied upon the discarded portion of the proposal in holding that the Rio Grande violated Article 64.

Secondly, even if the court below could properly have relied upon the fact that certain provisions were discarded, still the court below should have held that Article 64 was not violated. The language, "discontinuing or rearranging old assignments", was superfluous since it would have neither added to nor would its absence have substracted from the rights of the Rio Grande under Article 64.

Both before and after 1945 the Rio Grande had the right unilaterally to abolish runs. At the trial of this case, direct, unequivocal and uncontradicted proof was adduced that the Rio Grande has again and again abolished runs unilaterally without negotiation, and without protest or claims by the Trainmen that the agreement was thereby violated (R. 54, 58, 60-61, 65). As the Adjustment Board has often held, "practice of parties under an agreement is controlling unless it is clearly in violation of a specific rule of the agreement" (First Division Award 13528, p. 6). See also 4 Williston, Contracts, § 623 (3d ed., 1961). The practice of the parties under this agreement makes it clear that the Rio Grande could discontinue assignments unilaterally. This carrier had the right to abolish the Provo-Eureka run just as it abolished over 30 other assignments listed in the agreement (R. 60, 61).

The Rio Grande admits that prior to 1945 it did not have the right unilaterally to rearrange an old assignment, as here in question, by abolishing the old run and establishing a new run. That is because the collective bargaining agreement then in force between the parties specifically limited the right of the Rio Grande to establish new runs (R. 24). In 1945 the Rio Grande regained the right unilaterally to establish new runs which it had bargained away in the prior years (*supra*, pp. 7-9). Thus under Article 64 the Rio Grande not only had the right unilaterally to abolish old runs, but it also had the right unilaterally to establish new runs. Therefore, after 1945 the Rio Grande could rearrange an old assignment, as was done here, by abolishing the old run and establishing a new run. The language, "discontinuing or rearranging" old runs, was superfluous since the Rio Grande always had the right to abolish an old run, and in 1945 when the carrier regained the right to establish new runs, it then had the right to rearrange runs. Accordingly,

the court below erred in holding that Article 64 had been violated.

CONCLUSION

This case involves questions of general importance to the parties, but as in Case No. 847, the questions presented are not worthy of the time and attention of the Court. Therefore, it is respectfully submitted that in the event the Court should grant the petition for a writ of certiorari in No. 847, this petition for a writ of certiorari should likewise be granted.

Respectfully submitted,

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Of Counsel.

March 1965.

APPENDIX A

Judgment of the United States Court of Appeals for the Tenth Circuit:

JUDGMENT

Fourth Day, November Term, Thursday, November 19th, 1964.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable Orie L. Phillips, and Honorable David T. Lewis, Circuit Judges.

These causes came on to be heard on the transcript of the record from the United States District Court for the District of Colorado and were argued by counsel.

On consideration whereof, it is now here ordered by the court that the judgment of the said district court in these causes be and the same is hereby affirmed. Each party shall bear its own costs.

APPENDIX B

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

NOVEMBER TERM, 1964

BROTHERHOOD OF RAILROAD TRAINMEN, G. W. BLACK AND R. E. GARDNER,
Appellants and Cross-Appellees,

vs.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,
Appellee and Cross-Appellant.

Nos. 7651 and 7652

Appeal from the United States District Court for the District of Colorado

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James L. Highsaw, Jr., Washington, D.C., (Philip Hornbein, Jr., Denver, Colorado, and Hornbein & Hornbein, Denver, Colorado, and Mulholland, Hickey & Lyman, Washington, D.C., Of Counsel, on the brief) for Appellants and Cross-Appellees.

Walter J. Cummings, Jr., Chicago, Illinois, (T. A. White and Kenneth D. Barrows, Denver, Colorado, and Ray Garrett, Chicago, Illinois, and Sidley, Austin, Burgess & Smith, Chicago, Illinois, Of Counsel, on the brief) for Appellee and Cross-Appellant.

Before MURRAH, Chief Judge, and PHILLIPS and LEWIS, Circuit Judges.

LEWIS, Circuit Judge.

This is an action brought under Section 3 First (p) of the Railway Labor Act, 45 U.S.C. § 125 First (p), to enforce an order of the National Railroad Adjustment Board, First Division. The Board order determined that the appellee railroad had violated its collective bargaining agreement with the appellant Brotherhood and granted an award to the individual appellants, as employees of the railroad and members of the craft represented by the Brotherhood, of one day's full pay for each claim filed. The cause was submitted to the District Court upon stipulated facts. That court held that the Board had correctly determined that the railroad had breached its bargaining agreement but had incorrectly determined the amount of the allowable award. Judgment in the District Court was entered in favor of the individual claimants for nominal damages of one dollar per day for each claim. By cross appeals the parties assert error in the portion of the judgment that is adverse to their respective interests.

The undisputed pertinent facts may be summarized. Prior to March 6, 1952, the railroad operated a forty-five mile straight-away run between terminals located at Provo and Eureka, Utah. On March 6 the railroad notified the Brotherhood that the run would be changed from a straight-away to a daily turnaround run operating over the same line. As a result, the crew would return each evening to the home terminal, Provo, rather than every other evening. The change required the same number of crew members, called for the same rate of pay, and maintained the same length of assignment, six days per week. The Brotherhood protested the unilateral action of the railroad in effectuating the change, asserting it to be subject to negotiation under the provisions of Article 64 of the collective bargain-

ing agreement; the railroad contended that such interpretation of Article 64 was incorrect. Article 64 provides:

"Establishing New Runs

"The Company is not prohibited by any Article or provision of this Agreement from establishing new runs, or new assignments. Notices calling for bids on any new run or new assignment must state definite limits and must show number of days per week (6 or 7) to be worked and time crew will go on duty.

"Rates of pay for any new run or new assignment will be in accordance with rates for similar assignments on the same Sub-Division. If no similar assignment on the same Sub-Division, rates of pay will be a matter of negotiation between the designated General Officer and General Chairman of the Brotherhood of Railroad Trainmen.

"Note: Time for crews to go on duty will not be changed without at least 48 hours' notice. When time to go on duty is changed one (1) hour or more the assignment will be rebulletined."

In interpreting Article 64 both the Board and the District Court concluded that the railroad had violated its terms. We hold that such determination is within the bounds of reasonableness and consequently not in error. Article 64 became part of the collective bargaining agreement in 1945, prior to which the agreement had specifically required the railroad to negotiate new runs. By Board decision and by practice this earlier provision had been interpreted and applied as highly restrictive upon the right of the railroad to change tabulated assignments or working conditions without negotiation. In bargaining for the 1945 contract the railroad proposed a revision of the provisions of Article 64, the pertinent part of such proposal reading:

"Establishing New Runs—Freight or Mixed Service

"The Company is not prohibited by any article or provision of this Agreement from establishing new runs, or new assignments, or from discontinuing or re-arranging old assignments. Notices calling for bids on any new run, new assignment or re-arrangement of an old assignment must state definite limits and must show number of days per week (6 or 7) to be worked.

"Rates of pay for any new run, new assignment or change in old assignment will be in accordance with similar rates for similar assignments on the same subdivision. If no similar assignment on the same subdivision, rates of pay will be through freight rates (plus conversion rates if local work as defined in Conversion Rule (5-D) is performed)."

The proposal of the railroad was accepted by the Brotherhood only in part, and all reference to the re-arrangement of assignments was deleted. And while the apparent significance of proposal and counterproposal of parties engaged in the continuing and repetitive technique of collective bargaining may not always be reliable as a complete reflection of the parties' intent, we are satisfied in the case at bar that the history of Article 64 is ample support for the court's conclusion as to the article's proper interpretation. Certain it is that the railroad's contention that its change from a straight-away to a turnaround run established a new run or assignment, specifically authorized by Article 64, is both strained and unpersuasive.

Subsection First (p) of 45 U.S.C. § 153 provides that the suit in the District Court "shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated. . . ." Although the Board order awards to the individual appellants a full day's pay for each claim filed, both the findings and the order of the Board make no mention of

the basis for the amount of the award. And since the parties have stipulated that the aggrieved employees have suffered no actual monetary loss or hardship from the contract violation, both the weight of the Board order as evidence of fact and the presumptive correctness of the Board order, Elgin, Joliet & Eastern Ry v. Burley, 327 U.S. 661, are completely dissipated. The District Court, then proceeding as in "other civil suits," limited the award to nominal damages and refused enforcement of the Board order to a greater extent.

The collective bargaining agreement contains neither a provision for liquidated damages nor punitive provisions for technical violations. The Board has no specific power to employ sanctions and such power cannot be inferred as a corollary to the Railway Labor Act. See Priebe & Sons v. United States, 332 U.S. 407, 413. And if, as counsel for the Brotherhood contends,[1] there exists within the industry a long established and accepted custom to pay what would amount to a windfall for contract violations such as here occurred, such custom was not established by finding, nor requested as a finding, in the procedures before either the Board or the District Court. We conclude that the District Court correctly determined that the instant case is gov-

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[1] Counsel states that a review of awards of the National Railroad Adjustment Board as of September 18, 1963, indicates that "there are more than 1,000 cases involving railroads throughout the United States, in which a carrier has been required to pay a basic day's pay for a violation of a contract provision although the contract did not contain any provision for punitive damages or penalties. At least 110 of these awards involved the D&RGW." We have not, of course, made such a review. However, we find no statement in any of the awards to which we have been specifically referred that indicates the alleged custom to have been established as a fact. And, indeed, several of the awards hold that actual loss is a prerequisite to an award.

erned by the general law of damages relating to contracts; that one injured by breach of an employment contract is limited to the amount he would have earned under the contract less such sums as he in fact earned. Atlantic Coast Line R.R. v. Brotherhood of Ry. Clerks, 4 Cir., 210 F2 812, 815; United Protective Workers v. Ford Motor Co., 7 Cir., 223 F2 49, 53-54. Absent actual loss, recovery is properly limited to nominal damages. Oklahoma Natural Gas Corp. v. Municipal Gas Co., 10 Cir., 113 F2 308; Norwood Lumber Corp. v. McKean, 3 Cir., 153 F2 753; 5 Williston, Contracts (rev. ed.) § 1339A.

The judgment is affirmed. Each party shall bear its own costs.

APPENDIX C

Section 3 First (p) of the Railway Labor Act (45 USC § 153 First (p)) provides:

> (p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.